IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 7142 of 2005

RAM CHANDRA
V/S
JUDGE,CIVIL JUDGE (J.D.)UDAIPUR & ORS.

Mr. RAJESH JOSHI, Mr.MANOJ BOHRA, for the appellant / petitioner

Date of Order : 30.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner, and perused the impugned order.

It is contended by the learned counsel, that after recording of examination-in-chief of the plaintiff, the petitioner was not given sufficient opportunity to cross-examine, and simply because on one date, defendant or his counsel was absent, the cross-examination had been closed, therefore, he filed application for recalling that order, and be given permission to cross-examine, which application has wrongly been dismissed.

The learned trial Court has observed, that the examination-in-chief of witness was recorded on 19.9.2003, and at the request of defendant, cross-examination was reserved. Then on subsequent hearings, the Presiding Officer was not available. However, on last of such dates, the defendant has changed his counsel, and on 5.4.2004 the

order was passed closing the right of cross-examination. Then it has been observed, that thereafter, on 28.5.2004, as plaintiff was given sufficient opportunities, and therefore, his evidence was closed, and the case was fixed for defence' evidence on 15.9.2004, but the defendant again changed the counsel, and then on 11.10.2004 the present application has been filed. Inter-alia considering this, including on account of absence of the petitioner, the order, which was passed on 5.4.2004, was declined to be recalled.

In my view, the order does not require interference in my writ jurisdiction. The writ petition is, therefore, dismissed summarily. However, it is clarified that it will be open to the petitioner to assail the correctness, legality, or propriety of the impugned order in appeal by raising appropriate ground, if the petitioner so stands advised and necessity so arises.

Before parting with the case, it may be observed, that learned counsel made available for my perusal the order-sheets of the learned trial Court, which show, that on 15.9.2004, the defendant No.2 was given last opportunity to produce evidence, and then after some adjournments, vide order dated 28.10.2005, the case was posted for evidence of defendant No.1 only, as the defendant No.2 was given sufficient opportunities. Then vide order dated 21.2.2006, the defendant No.1 wanted further time to produce evidence, as adjournments had been sought earlier, whereupon the

adjournment was granted on cost of Rs.250/-. Then vide order dated 25.4.2006, it was observed, that defendant doesn't want to produce evidence today, as no evidence was available, and some application was filed under Order 18 Rule 17, which application was dismissed. Then the petitioner filed another application under Order 8 Rule 1 (3). Then on 6.11.2006 both the applications were dismissed with costs. Then on 10.1.2007, the petitioner wanted last opportunity to lead evidence, which was granted subject of payment of a cost of Rs.250/-. However, the evidence was not produced, and still the case is said to be going on for the defence' evidence.

To say the least, it is a very sad commentary, about the manner, in which the case is proceeding in the trial Court. The learned trial Court will be well advised to have effective control over the proceedings, and expedite the disposal of the suit. The learned District Judge is directed to look into the proceedings, and make sincere efforts to advise the officers to have effective control over the day to day proceedings, and to be mindful of the time frame given by the C.P.C. while granting adjournments.

(N P GUPTA),J.

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